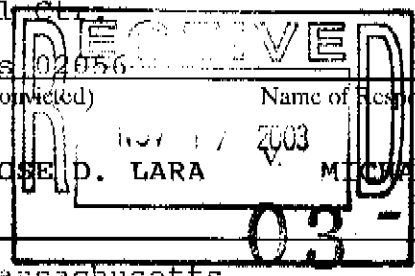


AO 241 (Rev. 5/85)

PETITION UNDER 18 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<b>United States District Court</b>		District Massachusetts
Name Jose D. Lara	Prisoner No. W-69058	Case No.
Place of Confinement Bay State Correctional Center P.O. Box 73 Norfolk, Massachusetts 02056		
<div style="display: flex; justify-content: space-between;"> <div> Name of Petitioner (include name under which convicted)  JOSE D. LARA </div> <div> Name of Respondent (authorized person having custody of petitioner)  MICHAEL CORSINI </div> </div>		
The Attorney General of the State of: Massachusetts		



RECEIVED  
03-12-2003  
CLERK OF COURT  
SUFFOLK, SS.

1. Name and location of court which entered the judgment of conviction under attack  
SUPERIOR COURTHOUSE - #2002-P-156 March 20, 2002
2. Date of judgment of conviction Trial - January 23-25, 2001 Ind. SUOR 99-10421
3. Length of sentence 5 to 6 years
4. Nature of offense involved (all counts) Traffic in cocaine by unlawfully, knowingly and intentionally possessing with intent to distribute a net weight of 20-100 grams in violation of G.L. c. 94C, section 31. ONLY ONE COUNT.
5. What was your plea? (Check one)
 

(a) Not guilty ☒
 (b) Guilty ☐
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

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6. If you pleaded not guilty, what kind of trial did you have? (Check one)
 

(a) Jury ☒
 (b) Judge only ☐
7. Did you testify at the trial?  
 Yes ☐ No ☒
8. Did you appeal from the judgment of conviction?  
 Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court SUFFOLK COURTHOUSE Appeal Court No. 2002-P-156
- (b) Result DENIED - August 1, 2003
- (c) Date of result and citation, if known August 1, 2003 "No citation yet"
- (d) Grounds raised There was no evidence that linked him to the crime  
of possessing any cocaine or intention to distribute.
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
- (1) Name of court Supreme Judicial Court (Appellate Review) August 11, 2003
- (2) Result DENIED - October 3, 2003
- (3) Date of result and citation, if known Appeal was filed 8/11/03 and Denied 10/3/03
- (4) Grounds raised Whether the judge erred by denying the defendant's motion  
for required finding of not guilty where no drugs were found on him.

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court NONE
- (2) Result NONE
- (3) Date of result and citation, if known N/A
- (4) Grounds raised N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court NONE

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: No drugs were found on the Petitioner, no hand to hand exchange occurred and Petitioner actions do not rise to the level of participation required of a coventurer.

Supporting FACTS (state *briefly* without citing cases or law) The Judge erred by denial of a motion for a required finding of not guilty requieres the reviewing court to consider the evidence was sufficient to satisfy a reasonable finder of fact of each element of the crime charged beyond a reasonable doubt. The Petitioner had no knowledge of the contraband's presence in the vicinity where he were in the arboretum. There is nothing presented as to indicate a shared intent of the Petitioner to participate on the crime. (2d)- Petitioner contends the veracity of

B. Ground two: the testimony of Police Officers with errors and inconsistencies.

Supporting FACTS (state *briefly* without citing cases or law) Throughout the trial, there were numerous areas of inconsistencies in the testimony of the police officers who conducted the investigation. To wit, the Commonwealth relied heavily on the so-called "footprints" created in the snow by Petitioner's co-defendant sneakers; the single trail leading to the tree where the contraband was found and the uncertainty as to the color of the vehicle which had been under investigation for several months, that was the only evidence at trial.

C. Ground three: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

D. Ground four: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

**APPEALS WAS PROPERLY MADE IN THE STATE.**

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Arnold P. Cohen (BBO #088500)  
262 Washington Street (Tenth Floor) Boston, Mass. 02108

(b) At arraignment and plea Sme as above

- (c) At trial Same attorney
- (d) At sentencing Same attorney
- (e) On appeal Att. Joseph Waldbaum Esq. 100 Cummings Center,  
(Suite 339-C) Beverly, Massachusetts 01915
- (f) In any post-conviction proceeding The above attorney represented me in both  
post-conviction proceedings.
- (g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☐

No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐

No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒

No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11-12-03  
(date)

Jose David Gera  
Signature of Petitioner